

Circular 2244 (1932), give the Director of the Bureau of Prisons the sole discretionary authority to determine which items will be sold through institution commissaries and how, if at all, any Commissary Trust Fund profits will be disbursed. Both trust documents also authorize the Bureau to restrict inmates' commissary privileges to further penological goals and state that inmates are not entitled to any profits derived from the operation of institution commissaries. Thus, while the Commissary Trust Fund benefits the inmate population "as a whole," inmates are not legal "beneficiaries" of the trust and have no right to control Commissary Trust Fund expenditures. For the reasons stated in the section entitled "PURPOSE OF THE AMENDED REGULATIONS," the Bureau has determined that the ITS benefits both the inmate population and the public, such as protecting the public from inmate telephone abuse, and furthers the Bureau's correctional goals. It is appropriate, therefore, to pay the ITS expenses from the Commissary Trust Fund.

The same commenter also contended that because the ITS program has enhanced security features, it should be paid for by using other appropriations. The commenter referenced 18 U.S.C. 4007, which calls for expenses attendant to the confinement of prisoners to be paid out of the Treasury of the United States.

In response, the Bureau first notes that security equipment and supplies used to record telephone calls are not funded by Commissary Trust Fund revenues. Rather, funds for this equipment and these supplies will continue to be allocated from other appropriated Bureau funds.

As for the other security features, the Bureau believes that one of its primary objectives is to ensure the security and good order of Bureau institutions, thereby benefitting both the inmate population as a whole and the public. It is not inappropriate to expend Commissary Trust Fund profits on the ITS merely because the system assists in achieving this goal.

Finally, with respect to the provisions of 18 U.S.C. 4007, the Bureau notes that Congress recently passed legislation which provides for inmates to pay for the costs of the first year of their incarceration, if they can afford to do so. See 18 U.S.C. 4001; Section 111 of Public Law 102-395 (106 stat. 1842). Thus, the Bureau does not read 18 U.S.C. 4007 as precluding the sale of goods and services in institution commissaries or charging the inmates with other fees authorized by law.

2. Replacement of Collect Call System

Many commenters requested the retention of inmate collect call on demand privileges. These commenters recommended that the direct-dial system be added to, rather than replace, the collect call system, so that what the commenters refer to as a "dual system" could operate. The "dual system" would continue the collect call on demand capability of the former collect call system. The Bureau responds as follows:

a. As an initial matter, the Bureau notes that these comments may be based upon a belief that, with the installation of the ITS, inmates would no longer be allowed to make collect calls. However, the amended regulations allow for limited collect calling.

In the proposed rule, the Bureau recognized that there is a need for inmates to be able to make collect calls in specific instances, such as emergencies, or for holdovers or pre-trial inmates. Section 540.101(d) of the proposed rule specifically addresses this issue. As expanded in the final rule, this section, now § 540.101(e), provides for a more comprehensive listing of those persons who have a need to make collect calls, such as new arrivals, including new commitments and transfers, and inmates without funds. Similarly, final § 540.105(b) specifically provides for collect calls to be available for inmates without funds. See further discussion below, in the section entitled "7. COSTS. . . d. Inmates without funds."

b. Several inmate commenters complained that their low institution earnings and need to purchase personal hygiene items would prevent them from making as many direct-dialed telephone calls as they could make with the collect call system. While it is true that inmates do not earn regular scale wages, neither do they have regular living expenses, such as housing, clothing, food, medical and dental. In addition, the Bureau's existing policy on grooming, codified at 28 CFR part 551, subpart A, provides for the Warden to make available to inmates those articles necessary for maintaining personal hygiene. The Bureau's internal implementing language to that provision provides that the basic hygiene items to be made available to inmates include soap, toothbrushes, toothpaste or powder, combs, shaving supplies, and feminine hygiene products. Inmate complaints regarding provision of these basic items should be addressed through the Administrative Remedy Program. See 28 CFR part 542.

The average inmate has ample discretionary funds to purchase items of

a personal interest, such as additional hygiene and cosmetic items, and direct-dialed telephone calls. As of October 1993, the monthly inmate trust fund account balance averaged \$115.78 per inmate. Through June 1993, the annual commissary purchases made by inmates averaged \$1,046.87 per inmate. At the institution where the majority of inmate comments on this rule originated, the annual commissary purchases averaged \$1,254.09 per inmate and the average monthly inmate trust fund account balance was \$101.95 per inmate.

Moreover, the amended regulations encourage the inmates to establish spending priorities and to choose between such items as telephone calls, cigarettes, candy, and special hygiene products, thus furthering the correctional goal of assisting inmates to be financially responsible. The average citizen who must live within a budget must make similar spending choices, and may not be able to pay for any more long-distance calls than the two to three calls a month that one inmate commenter complained was only possible within his budget.

For these reasons, we do not agree with comments implying that it is wrong to require inmates to make choices on how to spend their funds. However, the Bureau believes that it is necessary to address telephone access for inmates without sufficient funds. The Bureau's accommodations on that point are noted below in the section entitled "7. COSTS. . . d. Inmates without funds."

c. Some inmate commenters stated that the proposed regulations would force them to beg for telephone money from the people they want to call. The Bureau believes that such characterization also applies to the solicitation to accept a collect call. As one inmate commenter stated, "[i]t is belittling for me to have to call anyone collect." Although this commenter advocated the installation of "regular pay telephones," he preferred to place direct-dialed calls that he could pay for, rather than his family, because his family had experienced serious difficulties due to the large telephone bills from collect calls.

d. Some commenters requested the retention of the collect call system so that they can pay for an inmate's telephone calls. Commenters stated, in a form letter, that "[t]he new telephone system would force me to send money to ensure that loved ones could call, but would offer no means of controlling if calls were made [to] me or the money was spent otherwise."

Under the amended regulations, people who would accept an inmate's

collect calls may send the inmate money to defray the cost of the direct-dialed calls. As discussed in the section entitled "PURPOSE OF THE AMENDED REGULATIONS," this will provide the inmate with an opportunity to demonstrate the responsible use of resources provided by the community. The recipients of an inmate's calls should also benefit as they can send less money to the inmate for the same amount of telephone time since the direct-dial rates are, on average, less expensive than the former collect-call rates.

To further address the commenters' concerns, the Bureau has added a provision to its final rule, excluding from the inmate's IFRP calculation a set amount of monies deposited into the inmate's trust fund account. See 28 CFR 545.11(b) and further discussion below in the section entitled "4. Conditioning Use of the Its Upon Participation in the IFRP." This helps ensure that the inmate is able to make telephone calls with monies sent to the inmate from members of the community for telephone calls. If the inmate elects not to use these funds to call the sender of the money, the sender has the option of not forwarding additional monies.

e. Some commenters believe that the actual administration of the ITS may be more expensive because additional staff will be needed to operate the system. Implementation of the ITS at most institutions does require additional employees who are responsible for the operation of the ITS. However, the Bureau believes that the costs for additional staff are well justified by the significant benefits of the ITS, described above in the section entitled "PURPOSE OF THE AMENDED REGULATIONS."

f. Comments stated that a "dual system" would not be difficult or costly to install and maintain; e.g., that "the systems already installed at institutions could be reprogrammed very easily . . . with little or no modification of existing equipment." The Bureau disagrees with this position. The contract for the ITS was awarded for a primarily direct-dial system. The contractor estimates that it would cost several million dollars to modify the system to provide collect call on demand capability.

g. Finally, there are security reasons for rejecting the commenters' suggestion that the final regulations be amended to permit inmates to make collect calls on demand. As noted above in the section entitled "PURPOSE OF THE AMENDED REGULATIONS," inmates are able to use the unlimited collect call system to engage in various forms of harassment and criminal activity. Providing a "dual

system" that would permit inmates to call anyone collect would do nothing to resolve these problems. For example, an inmate could still bill a call to a party who has no intention of paying. An inmate also could more easily monopolize the telephone, due to the absence of financial constraints on that inmate, and resulting tensions could jeopardize the safety and security of the institution.

It might be possible to curb some of this abuse by limiting inmate collect calls to numbers on an approved telephone list and requiring those inmates to use Personal Access Codes (PACs) similar to those required by these amended regulations for making direct-dialed ITS calls. However, again, this would not prevent inmates from billing calls to a party who has no intention of paying. In addition, inmates would have less of an incentive to keep secret their PACs, as required in 28 CFR 540.101(c). The PACs could be used to place collect calls, for which the inmates bear no financial responsibility, rather than direct-dialed calls, for which the inmates are financially responsible.

It is would undermine many of the security features of the ITS because it would be more difficult for the Bureau to monitor and restrict illegal or abusive inmate telephone calls if the Bureau did not know which inmate was using which PAC. Similarly, an inmate could circumvent some of the telephone list restrictions by using other inmates' PACs to call numbers that he or she was not permitted to call.

In concluding a response on this issue, the Bureau believes that restricting collect calls on demand furthers important penological and security goals. At the same time, the final rule adequately addresses the needs of inmates to make collect calls in appropriate circumstances. For these reasons, the Bureau has decided not to implement a "dual system" with collect call on demand capability.

3. Constitutional Concerns

Some commenters suggested that operation of the ITS is a violation of the constitutional rights of inmates and others, as follows:

a. **First Amendment rights to free speech.** Several commenters claimed that the proposed regulations violate their First Amendment rights to free speech without providing any detail as to the alleged violations. Our review of the comments on this issue suggests that at least some of the arguments are based on inaccurate or unrealistic expectations.

The Bureau, by implementing the ITS, does not intend to, nor does it,

unconstitutionally restrict an inmate's opportunity for freedom of speech. Bureau regulations provide for several means of communication, including correspondence, visiting and telephones. See 28 CFR part 540, subparts B and D. The revised rule is not intended to, nor does it, prevent an inmate from exercising his or her right to communicate.

One inmate commenter said that he would have personally called in his comments on the proposed rule but that "the number was not approved." The Bureau points out that this commenter would not have been able to call in his comments under the former collect call system either, as the Bureau does not accept collect calls and the appropriate method for commenting on proposed regulations is to send written comments to the Bureau.

One commenter, an association of newspaper editors and reporters, asserted that the ITS hinders the rights of the press and the public to gain access to important information about prison inmates and prison conditions. Primary concerns expressed by the commenter were that the revised telephone regulations would hamper the ability of inmates to communicate with the press and that the regulations potentially threaten the relationship between journalists and their sources; that restrictions on collect calls and the use of an authorized telephone list establish procedural hurdles placing significant new burdens on the inmate's ability to reach the community; that the ITS does not allow for timely telephone access to the media; that the disclosure by a journalist of the information required by the Request for Telephone Privilege form was inappropriate. The commenter noted that journalists do not have to provide this information in order to receive Special Mail from inmates. The commenter further indicated that while Bureau regulations may implicate substantial government interests, the regulatory sweep is too broad.

As an initial matter, the Bureau's revised telephone regulations do not conflict with what the commenter seems to identify as a First Amendment requirement that prisoners be allowed to call members of the news media. Inmates have no First Amendment entitlement to telephone use, or to the unrestricted use of the telephone. See *Benzel v. Grammer*, 869 F.2d 1105 (8th Cir. 1989), cert denied, 493 U.S. 895 (1989). Similarly, the First Amendment does not entitle the press to any greater right of access to prisons or inmates confined therein than the general public. See *Pell v. Procunier*, 417 U.S.

817, 41 L.Ed.2d 495, 94 S.Ct. 2800 (1974); *Saxbe v. Washington Post*, 417 U.S. 843, 41 L.Ed.2d 514, 94 S.Ct. 2811 (1974). In *Pell*, the Supreme Court held that alternative means of communication is a relevant factor in balancing First Amendment rights with legitimate government interests.

More specifically, the Bureau notes that the new regulations permit inmates to list telephone numbers for members of the media on the same terms and conditions as telephone numbers for any other person. Thus, a member of the news media, as with any other person, may be included on an inmate's telephone list except when Bureau staff determine that contact with the person will pose a threat to institution security and good order, or a threat to the public. See 28 CFR 540.101(a).

In addition, as the commenter acknowledges, the Bureau affords inmates the opportunity to write to members of the news media via sealed correspondence identified as "Special Mail." See 28 CFR part 540, subpart B. Similarly, as the commenter also acknowledges, Bureau regulations (see 28 CFR part 540, subpart E), provide for media visits to prisons to observe conditions and interview inmates. These provisions provide the news media ample opportunity to have effective communications with those in prison. Thus, while *Saxbe* held that the press has no First Amendment right to greater access than the public, the Bureau, through its Special Mail and contact with the news media provisions, has elected to provide the news media with such privileges. The revised telephone regulations do not change or affect the regulations regarding Special Mail or media visits. The revised telephone regulations will continue to work in concert with current Bureau regulations on correspondence, visits, and contacts with the news media.

The commenter, while acknowledging the existence of these opportunities between inmates and the press, asserts that mail does not offer the advantages of instant communication available through the telephone. We specifically disagree with the commenter's subsequent statement that the proposed rule is inappropriate because " * * * an initial telephone conversation may often be required to convince a busy journalist that an inmate's story truly is newsworthy." Regulations for inmate telephone use are intended to provide inmates with a supplemental means of communication that is consistent with other aspects of correctional management, and are not intended to function as a convenience for the news

media in the editorial decision-making process.

Comments suggested that the revised telephone regulations impose an unconstitutional prior restraint on First Amendment freedoms. For reasons discussed below, in the section entitled "5. LIST OF NUMBERS TO BE CALLED.", the Bureau believes that requiring inmates to submit lists of telephone numbers does not constitute an unconstitutional prior restraint. Briefly, this procedure furthers legitimate governmental interests in maintaining the safety and security of Bureau institutions; the Associate Warden may deny placement of a telephone number on an inmate's telephone list if he or she determines that there is a threat to institution security and good order or a threat to the public; and any disapproval must be explained in writing, and is subject to appeal through the Administrative Remedy Program. See 28 CFR 540.101(a)(3).

Finally, with respect to the Request for Telephone Privilege form ("form"), the Bureau has decided to discontinue use of the form, for reasons described below in the section entitled "b. Fourth Amendment rights to privacy." Rather, except for immediate family members and those persons already on an inmate's visiting list, a letter will be sent to potential recipients of telephone calls to notify them that they have been placed on an inmate's telephone list and to inform them of the procedure to follow if they do not want to receive calls from that inmate. No specific information is required from potential recipients. This change should substantially accommodate concerns on this issue.

b. Fourth Amendment rights to privacy. Several non-inmate commenters claimed that the proposed regulations violate their Fourth Amendment rights to privacy. Some comments objected to the form addressed to potential recipients of inmate telephone calls, claiming that they should not have to be "investigated" in order to receive a telephone call.

The Request for Telephone Privilege form ("form"), as originally developed by the Bureau, included questions as to the relationship of the recipient to the requesting inmate, possible criminal background of the recipient, and contacts, if any, of the recipient with other inmates. The Bureau has reassessed the benefits of this form and has decided to discontinue its use. Therefore, the proposed rule has been revised to provide for potential telephone call recipients (other than

immediate family or persons on the inmate's visiting list) to be notified in writing that they have been placed on an inmate's telephone list. See 28 CFR 540.101(a)(2). The written notice informs recipients that they can notify the institution in writing if they do not want to receive calls from the inmate. The notice does not request any information from the recipient, and the recipient will not have to return the notice to the institution in order to receive calls from the inmate.

Another comment stated that consent should be sought from those persons whose names and telephone numbers have been placed on an inmate's telephone list. For several reasons, the Bureau disagrees.

First, requiring each recipient's prior consent would impose an administrative burden resulting in delayed processing of inmate telephone lists. Specifically, obtaining prior consent would require the Bureau to send each potential recipient a form asking if the recipient wanted to receive an inmate's calls. If the potential recipient wanted to receive the calls, he or she would then have to return the completed form back to the institution before the number could be entered on the inmate's telephone list. During the weeks or months to complete this process, the inmate would be unable to place non-emergency calls to this potential recipient. This anticipated delay was a matter of concern to some commenters and is avoided in the final rule by discontinuing the use of the form requesting prior consent from potential recipients.

Second, to the extent that non-inmate commenters were concerned about receiving unwanted calls from inmates, the Bureau believes that this concern is substantially alleviated by sending a notice letter to potential recipients other than an inmate's immediate family and persons on the inmate's visiting list. In the event a recipient subsequently notifies us in writing that he or she does not wish to be contacted, the recipient will be removed from the inmate's list. See 28 CFR 540.101(a)(2).

A letter will not be sent to an inmate's immediate family and persons on the inmate's visiting list because the Bureau assumes that these individuals would not object to receiving telephone calls from the inmate. Of course, if these individuals do not want to receive calls from an inmate, they may simply notify the Bureau in writing and the Bureau will remove their numbers from the inmate's telephone list.

In addition, the final rule contains other provisions that seek to protect the public from harassing or unwanted

inmate calls. First, the rule provides that the inmate shall acknowledge that, to the best of the inmate's knowledge, the person or persons on the list are agreeable to receiving the inmate's telephone call and that the proposed calls are to be made for a purpose allowable under Bureau policy or institutional guidelines. See 28 CFR 540.101(a)(1). Inmates who violate this provision may be subject to discipline. See 28 CFR 540.100(a). Also, the Bureau may deny a proposed telephone number if it determines that the inmate's ability to call that number would pose a threat to the public. See 28 CFR 540.101(a)(3).

Finally, the Bureau's compiling of inmate telephone lists to effectively manage a debit-billing telephone system does not violate any Fourth Amendment privacy rights of the recipient. This information is voluntarily provided to the Bureau by inmates who seek to make telephone calls and there is no reasonable expectation of privacy in this information. A person's telephone number is known by the telephone company and the people who call the number, as well as by the person to whom the number is listed. See *Smith v. Maryland*, 442 U.S. 735, 61 L.Ed.2d 220, 99 S.Ct. 2577 (1979).

In addition, the monitoring of inmate telephone conversations (other than properly placed calls to attorneys) is a matter of public record. See newly designated 28 CFR 540.102 (formerly § 540.101). A number of courts have upheld this practice as permissible under federal wiretap statutes (See, e.g., *U.S. v. Paul*, 614 F.2d 115 (6th Cir., 1980), *cert. denied*, 446 U.S. 941 and not prohibited by the Fourth Amendment. (See, e.g., *Lee v. Carlson*, 645 F.Supp. 1430 (S.D.N.Y. 1986). This fact further undermines any possibility that a recipient of inmate calls can have a reasonable expectation of privacy with respect to the information on inmate telephone lists.

c. Sixth Amendment right to counsel. Several commenters claimed that the proposed regulations violate their Sixth Amendment right to counsel. One commenter noted that "in this policy there are no guidelines for legal calls." Some commenters claimed that the proposed regulations prevent or in some manner limit legal calls. We disagree. The amended telephone regulations do not affect an inmate's access to unmonitored telephone conversations with his or her attorney.

Separate provisions continue to exist for inmates to make unmonitored legal calls and these provisions remain unchanged by the revised telephone regulations, although the Bureau has redesignated them from 28 CFR 540.101

and 540.102 to 28 CFR 540.102 and 540.103.

Further, as provided in redesignated § 540.103, the Warden may not apply frequency limitations on unmonitored inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting, or normal telephone use is not adequate. We also note that an inmate may choose to place an attorney on his or her telephone list, with the understanding that calls placed on the ITS are subject to monitoring.

For the above reasons, the amended telephone regulations do not change inmate access to unmonitored attorney telephone calls and therefore do not interfere with an inmate's right to counsel.

4. Conditioning Use of the ITS Upon Participation in the IFRP

Several commenters objected to conditioning inmate telephone use upon the inmate's participation in the Bureau's Inmate Financial Responsibility Program (IFRP). These objections were based upon a variety of concerns, and are addressed below.

As a general matter, and as noted in the proposed rule, the IFRP offers inmates the opportunity to develop a plan to meet certain legitimate financial obligations and to make payments toward fulfilling that plan. Examples of these obligations include court-ordered restitution, fines, or other government obligations. The effects of non-participation are set forth in the Bureau's existing rule on inmate financial responsibility. See § 545.11(d) of 28 CFR part 545, subpart B.

In the proposed rule, the Bureau added a new provision to § 545.11(d) which would ordinarily limit the inmate's telephone use to one call every three months. For the reasons discussed above in the section entitled "PURPOSE OF THE AMENDED REGULATIONS," the Bureau believes that it is appropriate to restrict the telephone access of inmates who refuse to participate in the IFRP. However, the Bureau is modifying this rule to provide no more than one inmate-paid call every month for inmates in IFRP-refuse status, unless the Warden allows additional inmate-paid calls for compelling circumstances. See 28 CFR § 545.11(d)(10). Inmates in IFRP-refuse status may also make unmonitored attorney calls pursuant to the procedures specified in redesignated §§ 540.102 and 540.103.

As modified, the rule will enable inmates in IFRP-refuse status to have access to the telephone, while still contributing significantly to an important correctional management goal

of the Bureau: the inmate's increased acceptance of personal responsibility. One inmate commenter seems to acknowledge this, in part, by stating, "[i]f you got (fine, asse(ss)ment) * * * you cannot call home or use phone period if you don't pay * * *. This system of (phone bills) * * * affect[s] me (by) * * * forc[ing] me to pay \$300.00 fine." As noted in the above section entitled "PURPOSE OF THE AMENDED REGULATIONS" and illustrated by the above comment, the Bureau believes that the ITS is an additional incentive for inmates to participate in the IFRP and pay their debts to society.

Comments objected to the operation of the IFRP itself, claiming that it punishes inmates without due process, or that it was administered in an unfair manner. The IFRP is not intended to be, nor is it, a disciplinary sanction; rather, it is a voluntary program used as a factor to assess inmate progress in accepting financial responsibility.

The IFRP has been duly promulgated through the rulemaking process and upheld by the courts. See *U.S. v. Williams*, 996 F.2d 231 (10th Cir., 1993); *Dorman v. Thornburgh*, 955 F.2d 57 (D.C. Cir., 1992); *Johnpoll v. Thornburgh*, 898 F.2d 849 (2d Cir., 1990), *cert. denied*, 498 U.S. 819; *James v. Quinlan*, 886 F.2d 627 (3rd Cir., 1989), *cert. denied*, 493 U.S. 870. Objections to its operation other than as relevant to telephones lie outside the scope of this rulemaking. The Bureau does note, however, that the Administrative Remedy Program (see 28 CFR part 542) provides a means for inmates who wish to challenge IFRP payment schedules.

Some commenters objected to the operation of the IFRP with respect to telephones, stating that inmate family or friends are afraid or unwilling to send money to an inmate for telephone calls because the sender has no control over how that money would be spent. These commenters expressed concern that money sent to inmates for use in payment of long distance telephone calls will be used to recalculate the inmate's resources in determining an IFRP payment schedule. Consequently, they feel that some of this money will be used to make payments toward the inmate's fines rather than to pay for telephone calls.

In response to this concern, the Bureau is amending its rule to provide that \$50.00 of the money deposited into an inmate's trust fund account each month will not be considered in determining the IFRP payment schedule. See revised 28 CFR 545.11(b). For purposes of this calculation, the

inmate trust fund account deposits include both institution wages and funds sent to the inmate from members of the community. The only limitation on the \$50.00 monthly exemption is the minimum requirement for IFRP contributions from UNICOR and non-UNICOR work assignments, as set forth in existing 28 CFR 545.11(b)(1) and (b)(2).

The \$50.00 monthly amount was chosen because it is high enough to enable the inmates to make a significant number of telephone calls. At the same time, however, the Bureau believes that there should be a specific limit on the amount of funds that will be excluded from calculation in determining the inmate's financial plan. The \$50.00 exclusion provides a clear rule that is easier to administer than one which states that any funds designated for telephone calls will be excluded from the calculation of an inmate's financial plan. Also, the Bureau believes that inmates should be encouraged to fulfill their financial obligations, e.g. pay court-imposed fines. The provisions of new § 545.11(d)(10), along with existing 28 CFR 545.11(b), help achieve the objectives of both the commenters and the Bureau.

Concerns were expressed that the proposed regulations place unfair telephone restrictions on inmates who cannot participate in the IFRP because they do not have the funds to pay their fines. Such complaints are based upon inaccurate assumptions that inmates, by not participating in the IFRP, are prevented from having full telephone access.

The Bureau's internal implementing instructions to staff regarding the IFRP clearly state that inmates may be temporarily exempt from IFRP participation when it is impossible for them to meet minimum payment schedules because of their inability to secure institution employment beyond maintenance pay and because of their absence of community resources. Such inmates will not be placed in IFRP refuse status. Therefore, they would not be affected by telephone restrictions based upon refusal to participate in the IFRP. Further discussion concerning telephone access for inmates without funds is discussed below, in the section entitled "7. COSTS...d. Inmates without funds."

A commenter objected to the IFRP provision, stating that an inmate with a fine who refused to participate in the IFRP could not call home or use the telephone at all. This commenter also claimed that the regulation "cuts off" all outside contact, including mail and visiting, if no fine is paid. These

contentions are not true. As noted in other sections of this preamble, inmates who refuse to participate in the IFRP have a variety of ways to communicate, including written correspondence. They also may make a limited number of telephone calls, as discussed above. Therefore, an inmate's outside contact is not "cut off" if the inmate refuses to participate in the IFRP.

This same commenter complained that conditioning inmate telephone use upon IFRP participation in effect forced him to work in an industrial assignment and alleged that many inmates (20%) would not work in Federal Prison Industries assignments except for the IFRP.

The Bureau first notes that industrial positions have long been requested by inmates because of the higher wages and the opportunity to learn skills for employment upon release. As noted by the Third Circuit Court of Appeals, "[a] Federal Prison Industries job assignment * * * is considered by many inmates to be more desirable than other types of work assignments * * *" *James v. Quinlan*, 866 F.2d 627, 628 (3rd Cir., 1989). In fact, many institutions historically have had waiting lists of applicants for these positions.

Even so, the Bureau believes that the operation of both the IFRP and the ITS will result in increased interest in industrial assignments, as suggested by this commenter, whose very complaint demonstrates one of the Bureau's purposes in amending these regulations. As a final note, even though institutions may have waiting lists for industrial assignments, existing Bureau policy provides for IFRP participants with obligations of at least \$250.00 to receive priority placement on industrial assignment waiting lists.

In conclusion, the IFRP remains a voluntary program. The amended telephone regulations are intended to encourage inmates to work, accept personal responsibility, responsibly manage their finances, and pay their fines and other legal obligations. For the reasons stated in the section entitled "Purpose of the Amended Regulations," above, the Bureau believes that it is appropriate to provide telephone privileges that are consistent with these correctional management goals:

5. List of Numbers To Be Called

Several commenters objected to the portion of the proposed rule in § 540.101(a) that specified that inmate calls ordinarily shall be placed to a number on their approved telephone lists, which may contain up to 20 telephone numbers. Some commenters seemed to object to having any list at all

or favored no restrictions as to who goes on the list, with the Bureau giving notice prior to a name being taken off the list. Other comments concerned the limitation of 20 numbers.

There are sound correctional reasons for requiring that inmate calls ordinarily be placed to a number on an approved telephone list. Among them are the following:

Under the former collect call system, there have been instances in which members of the public, including court personnel, victims, and family of former inmate associates, reported receiving abusive or harassing telephone calls from inmates and requested that the Bureau preclude the inmate from calling them in the future. As noted above in the section entitled "Purpose of the Amended Regulations," there were also cases in which inmates used the telephone to engage in criminal activity. Short of standing next to the telephone and watching every call the inmate made—a nearly impossible task given the large number of inmates and the limited number of staff at the institutions—the Bureau has no practical way to prevent such an inmate from making additional improper calls through the former collect call system.

The amended regulations are expected to help reduce inmate abuse of telephone privileges. By requiring that potential recipients of inmate telephone calls be notified that they have been placed on an inmate's telephone list (other than immediate family members or those persons who are already on the inmate's approved visitor list) and by limiting calls to numbers on the telephone list, the amended regulations help protect the public, including witnesses, victims, or other people who do not wish to have contact with the inmate, from receiving unwanted inmate telephone calls. In addition, by permitting the Associate Warden to deny placement of a number on an inmate's telephone list, the regulations provide an opportunity to prohibit telephone calls to persons that are determined to be a threat to the security and good order of the institution, or a threat to the public, before the calls occur.

In the event that the Bureau removes a number from an inmate's telephone list and the inmate then uses the telephone to harass that individual (by using another inmate's PAC number, for example), the inmate can be disciplined for violating regulations, as the inmate is required to acknowledge that persons on the telephone list are agreeable to receiving the inmate's telephone calls and that the calls will be made for permissible purposes. See 28 CFR

§ 540.101(a)(1) and § 540.104, formerly § 540.103. The telephone list requirement is intended to help protect inmates as well. In a debit-billing system, there will be some incentive for one inmate (Inmate A) to use another inmate's (Inmate B's) PAC number to make telephone calls charged to Inmate B's account. However, this incentive is substantially reduced if Inmate A can only call the approved numbers on Inmate B's telephone list.

Some commenters claimed that inmates should be permitted to call more than 20 numbers. The proposed rule limited the telephone lists to 20 numbers because the Bureau believes that number is high enough to accommodate the needs of the average inmate without undermining the security justifications for the list and unduly burdening Bureau staff. This belief is supported by a recent sampling of five ITS-activated institutions, which indicates that the inmate ITS accounts, on average, listed fewer than 10 telephone numbers and that 92 percent of the inmate ITS accounts listed fewer than 20 telephone numbers. Specifically, of the approximately 10,730 inmate ITS accounts surveyed, less than 900 inmate ITS accounts listed 20 telephone numbers.

However, in response to comments that some inmates desire to submit more than 20 numbers, the Bureau is amending these regulations to allow an inmate to place up to 30 numbers on the telephone list. The Bureau believes that for those inmates with such a need, the submission of up to 30 numbers may effectively be handled by staff without undermining the security reasons for maintaining a list of numbers. The final rule also provides that the Associate Warden may authorize the placement of additional numbers on the inmate's telephone list based on the inmate's individual situation, e.g., size of family. See 28 CFR 540.101(a). This change should accommodate the requests of inmates desiring to submit more than 30 numbers.

One of the inmate commenters seeking unlimited numbers on his telephone list also requested authority to call 800 numbers and to receive pre-paid credit cards from telephone companies. Use of 800 numbers and pre-paid credit cards would undermine the correctional management objectives of the ITS listed above in the section entitled "Purpose of the Amended Regulations". If an inmate has a need to call an 800 number under compelling circumstances, a request should be made for a staff-assisted call, as provided in 28 CFR 540.105(d).

Some comments suggested that the Bureau should permit inmates to submit updates to the list more frequently than once a quarter. The Bureau believes that the amendment to the final rule providing that inmate telephone lists may contain up to 30 numbers, rather than 20, should reduce generally the need for more than quarterly updates, as provided in these regulations.

However, the final rule also adds the phrase "at least" to provide the Warden the authority to allow more frequent updates, if appropriate. In addition, if an inmate has a demonstrated need for making a call to a number that is not on the inmate's telephone list, the inmate may be permitted to make additional calls.

Concerns were expressed about delays in processing updates to the telephone lists, once inmates have submitted their requests. The final rule will eliminate processing delays caused by the requirement in the proposed rule that the written authorization form be returned prior to placement of the telephone number on the inmate's telephone list. The final rule discontinues use of this form and ordinarily permits the immediate placement of telephone numbers on the inmate's telephone list. In addition, to avoid undue processing delays, the Bureau's implementing guidelines provide that once initial lists and updates are submitted, staff will process them ordinarily within ten working days.

Some comments objected to Bureau staff review of numbers submitted, suggesting that such review would be arbitrary and without standards. Another comment stated that the new rule constitutes a loss of opportunity to call all persons without a prior restraint.

The Bureau's rule does not prevent an inmate from submitting any telephone number he or she chooses to submit, including telephone numbers for persons other than family and friends. As revised, the final rule provides for the requested telephone numbers to be added to the inmate's telephone list. Further, the final rule modifies proposed § 540.101(a) with respect to specifying the grounds for rejection of requested numbers. As modified, that provision, now 28 CFR 540.101(a)(3), states that the Associate Warden may deny placement of a telephone number on an inmate's telephone list if the Associate Warden determines that there is a threat to institution security and good order or a threat to the public. Any disapproval must be documented in writing to both the inmate and the proposed recipient of the calls.

The Bureau notes that one commenter acknowledged that " * * * some of this [disapproval] is understandable, i.e., security, threats to the public safety; * * *" Examples of situations that may warrant rejection include, but are not limited to, indication that the proposed recipient of the call is involved in the introduction of contraband into the institution, in an escape plot, or in other activity threatening the public safety, such as harassing victims or witnesses. The rejection of a number may be appealed, as discussed in the next section.

6. No Separate Appeal Process

Some commenters complained that the proposed rule does not provide for any separate appeal of ITS-related decisions, specifically, decisions concerning the inmate's list of numbers to be called. The Bureau believes it is unnecessary to provide for any separate ITS appeal process because a program is already in place which is well-known and used by inmates to raise individual concerns about any correctional issue.

All inmates entering BOP institutions are informed of the Administrative Remedy Program, described in 28 CFR part 542. Briefly, the Program operates as follows: At the institution level, an inmate may raise concerns formally by filing a Request for Administrative Remedy on a form known as a BP-9. If the inmate disagrees with the Warden's response, he or she may file an Appeal to the Regional Director on a form known as a BP-10. If the inmate is dissatisfied with the Regional Director's response, he or she may file an Appeal to the Office of the General Counsel on a form known as a BP-11.

The Administrative Remedy Program is available for inmates to raise individual ITS-related complaints. Recently, the Bureau surveyed all institutions where the ITS has been implemented to determine the level of concern. This survey showed that only a very small number of ITS-related Administrative Remedy requests and appeals have been filed. In fact, only one percent or less of the total Administrative Remedy requests and appeals filed during the survey period were ITS-related.

Given the successful operation of the Administrative Remedy Program, the Bureau finds no reason to provide for any separate inmate appeal process in the revised telephone regulations. However, in response to these comments, the Bureau is modifying the final rule to include a reference to the Administrative Remedy Program. See 28 CFR 540.101(a)(3).

As amended, the final rule provides two remedies for individuals in the community who may wish to contest a decision to deny placement of their telephone number on an inmate's telephone list. The first option is for the involved inmate to file the aforementioned Administrative Remedy request. The second option is for the person in the community to write to the Warden requesting reconsideration of the decision. A statement to this effect has been added to the rule. See § 540.101 (a)(3).

7. Costs

Comments regarding costs of ITS telephone calls include the following four areas of concern:

a. Charging inmates for calls. Some commenters objected to inmates paying for their calls directly, claiming that it was unfair for inmates to have to choose between making telephone calls and purchasing other items in the commissary. The Bureau's response to these objections is set forth above in the *Response to Public Comment* section entitled "2. Replacement of Collect Call System", part b. In addition, these comments disregard the fact that the Bureau's telephone regulations have always stated that inmates are responsible for the costs of their calls. See former § 540.104. It is only recently, however, that the Bureau has had the technical capability to bill the inmates directly.

One inmate commenter apparently prefers to pay for his calls directly, as the costs of ITS direct-dialed calls are generally less expensive than operator-assisted collect calls. This commenter reported that his family had experienced serious difficulties because of the large telephone bills from collect calls and stated that "[a]t the time, I had money in my commissary account. Not enough money to pay for the calls at the extremely high collect call rates, but certainly enough to pay for them at dialing direct rates."

b. Charging a flat rate. Some commenters objected to the flat rates charged for ITS direct-dialed calls. Inmate comments discussed taking advantage of discounts offered by various telephone service companies. One commenter, a telephone service company, claimed that the proposed rule provided insufficient information to determine how the Bureau will support the billing configuration.

The final rule has no impact on the type of service necessary to support the ITS. As currently designed, local telephone calls placed on the ITS use telephone services provided by the local telephone company. Domestic long

distance telephone calls are placed on the U.S. Government's FTS2000 network. The FTS2000 network is a telephone service provided through a contract between the General Services Administration and U.S. Sprint. The Bureau is an authorized user of the FTS2000 network. The FTS2000 network offers no time of day or day of week discounts.

A correctional institution is a unique environment. Unlike the general public, inmates have limited control over when they may gain access to a telephone. It is therefore desirable for correctional management reasons to provide all inmates with the same rate, regardless of what time they might be able to access a telephone. In addition, a flat rate helps manage use of the telephone, since there is no longer any advantage to placing a call at a certain time of day. This helps to reduce tensions between inmates during the evening, when, under the former collect call system, rates are lowest. Inmates can also anticipate their cost for the call, regardless of when they may have the opportunity to place the call.

The charge to the inmates for the use of the ITS is designed to cover the costs of the ITS, including the cost of the telephone service, the salaries of employees hired to maintain the system, the cost of the lease and maintenance of the ITS software and equipment (excluding recording equipment), and the cost of any necessary supplies.

In most cases, the resulting flat rate for direct-dialed calls placed on the ITS is considerably less expensive than the same collect calls, even before taxes are added to the collect call costs. For example, from the institution where the majority of inmate comments on this rule originated, a seven-minute collect local call costs \$1.25. The same local call, if direct-dialed on the ITS, would cost \$.50, a savings of \$.75.

Similar savings are evident on costs of long-distance calls. For example, again from the institution confining the majority of inmates who submitted comments, a seven-minute collect long-distance call to New York City costs \$3.62 in the daytime, \$3.06 in the evening, and \$2.92 on the weekend. The ITS cost for the same call, regardless of time or day, is \$1.75, \$1.17 less than the lowest available collect call rate.

Some inmate commenters compared ITS rates with costs of telephone calls available in the industry through local carrier discounts, etc. The Bureau reminds these commenters that such discounts are not available in Bureau institutions and therefore, it is more appropriate to compare the ITS rates to

the collect call rates rather than to these discounted rates.

c. International calls. Some inmate commenters acknowledged that they were unable to make collect calls to their families in certain foreign countries. One commenter complained, however, that it costs more to place ITS international calls, specifically to Norway and Colombia. This commenter apparently does not dispute the fact that ITS calls to these countries are generally less expensive than collect calls. Rather, the commenter's complaint was based upon speculated costs for discount direct-dialed services not available to inmates.

As noted above, the only true comparison that can be made is between the costs of collect calls and ITS direct-dialed calls. These comparisons easily support the Bureau's belief that ITS calls are generally less expensive. A recent survey comparing the costs of ITS calls and the costs of collect calls from three institutions to several countries, including Norway and Colombia, supports the Bureau's position that the ITS calls are generally less expensive than collect international calls.

d. Inmates without funds. Several commenters stated that the proposed rule was unfair to indigent inmates, that these telephone regulations discriminate against inmates who do not have much money, and that they preferred the use of collect calls. However, neither the amended regulations, nor the ITS, prevent inmates' friends and family members who would accept collect calls from sending money to defray the expense of the direct-dial calls. Thus, under both the former collect call system and the new ITS debit billing system, an inmate claiming indigency is dependent upon someone else to pay for the inmate's telephone calls.

The Bureau believes that even inmates with limited financial resources need to develop budgeting skills and to accept personal responsibility for their actions. It is therefore appropriate to require these inmates to pay for some of their telephone calls. However, to ensure that such inmates are able to make telephone calls, the Bureau has amended the proposed rule to permit inmates without funds to make collect calls.

The phrase "inmate without funds" is defined as an inmate who has not had a trust fund account balance of \$6.00 for the past 30 days. See 28 CFR § 540.105(b). The \$6.00 ceiling was selected because it is above the maintenance pay level. Maintenance pay, which is currently \$5.25 per month, is the lowest pay grade for inmates at Bureau institutions. By

defining "inmates without funds" as an inmate who has not had a trust fund account balance for the past 30 days of \$6.00, the regulations ensure that inmates who are in the lowest pay grade and who lack outside sources of income will be able to make some collect telephone calls. The Bureau believes this standard is fairer and easier to apply uniformly than an unspecified "indigency" standard, which would be subject to discretionary interpretation.

The Bureau has modified its telephone regulations to more clearly address the issue of telephone access for inmates without funds. As stated in the proposed rule, the Warden may direct the government to bear the expenses of inmate telephone use under compelling circumstances. In addition, the Bureau has added a new section to the final rule to allow inmates without funds to make some collect telephone calls. See 28 CFR § 540.105(b). As revised, the final rule provides a collect call every month and allows the Warden discretion to provide greater access based upon local conditions, e.g., size of population, staff resources, usage demand. Implementing instructions to this provision recommend that an inmate without funds be provided approximately 30 minutes of collect calling capability each month.

It is noteworthy that a commenter, in discussing international calls, indicates that where she was unable to place collect calls because such calls were not processed by the telephone companies, the Bureau placed, and paid for, the call. This acknowledgement clearly demonstrates the Bureau's commitment to provide telephone access for needy inmates. In those instances, the compelling circumstance was created by the difficulties in placing such calls (e.g., some non-citizen inmate commenters reported their countries would not accept collect calls). In implementing the ITS, which provides for direct-dialed international calls, the Bureau is thus in a better position to commit its financial resources to those instances where the inmate is truly lacking in funds.

One inmate noted that the Bureau refused to pay for a telephone call to a foreign country that did not accept collect calls. As noted above, the Bureau is committed to making reasonable accommodations by assuming payment for a limited number of telephone calls in cases of compelling circumstances, such as when the inmate has lost contact with his family. That was not the case in the commenter's situation, as this commenter did acknowledge the existence of telephone contact with family members in this country.

In closing the Bureau's response to comments relating to costs, we note the Bureau has also decided to further amend 28 CFR § 540.100 to provide for an inmate who has not been restricted from telephone use as the result of an institution disciplinary action to make at least one telephone call each month. The existing rule provides for at least one call every three months. The Bureau believes this change helps to further ensure an inmate has an opportunity for telephone communications consistent with correctional management objectives.

8. Privacy Act Concerns

Comments expressed concern that in operating the ITS the Bureau's collection, maintenance, and use of information about potential recipients of inmate telephone calls violates the recipients' statutory rights to privacy under the Privacy Act, 5 U.S.C. 552a. Some commenters objected to what they perceive as the Bureau's alleged use of information on inmate visiting lists to create or compile telephone lists.

The amended regulations do not contemplate the Bureau's use of visiting lists as the source of names or numbers for use on inmate telephone lists. The final rule states, instead, that inmates are to provide information for the creation and maintenance of their telephone lists. See 28 CFR 540.101(a)(1).

These nonincarcerated individuals also objected to the Bureau's obtaining information about them from the telephone lists submitted by the inmates. The Privacy Act provides in relevant part that, "to the extent practicable," an agency shall collect information directly from an individual about whom the agency may make "adverse determinations." 5 U.S.C. 552a(e)(2). It is far more practicable to collect up to 30 names and telephone numbers from a single inmate than it is to collect them from each recipient of that inmate's calls.

Commenters also expressed concern about the form addressed to potential recipients of an inmate's calls on the ground that the form seeks information about those individuals which they allege to be private information. As discussed above in the section entitled "3. CONSTITUTIONAL CONCERNS * * * b. Fourth Amendment rights to privacy," the Bureau has revised the final rule to eliminate this form, and replaced it with a notice letter to potential recipients who are not immediate family or persons already approved for the inmate's visiting list. This change

should substantially accommodate comments on this issue.

9. Miscellaneous

In addition to the previous issues, comments received by the Bureau raised several other issues, and are addressed below:

a. One commenter, a telephone service company, perceived a potential for conflict between the proposed rule and potential orders and rules that may be issued by the Federal Communications Commission (FCC) arising out of the currently pending Billed Party Preference docket (BPP). The Bureau believes that it is not necessary to respond to comments based upon "potential problems". Accordingly, if the FCC or any other agency issues regulations in the future which conflict with these telephone regulations, the Bureau will take appropriate action at that time.

b. Commenters objected to the ITS stating that it was arbitrary and that its current use violates 28 CFR parts 540 and 545. For the reasons discussed above, there are valid correctional management reasons for amending the regulations to provide for the operation of the ITS. We do not consider these regulations to be arbitrary, as the ITS is being implemented following a pilot program and an assessment that it better addresses the Bureau's correctional goals and institution security needs.

With respect to the IFRP provision, the Bureau believes that the discussion above sufficiently addresses this comment.

c. A commenter wanted assurance that there would be no harassment or punitive actions based on inmate objection to the ITS implementation. Bureau staff are professionals and are provided training on their role and responsibilities. Staff retaliation against inmates is not tolerated. The Bureau's Office of Internal Affairs and the Inspector General of the Department of Justice will thoroughly investigate any allegations of misconduct. The Bureau's Chief Executive Officers will take appropriate action where indicated. The Administrative Remedy Program is another vehicle available to inmates to raise allegations of staff misconduct.

d. Commenters stated that it would be an additional financial hardship to have people send money. The basis for this complaint is not entirely clear in one comment; in a second comment, the commenter refers to the family sending money for hygiene items and that to require money for telephone use would pose an additional financial burden. As noted earlier, the Bureau does provide for basic hygiene items.

Some commenters were concerned that it may be necessary to exchange foreign currency prior to residents of a foreign country forwarding any funds, with some stating that their country does not allow its currency to leave the country. As noted above, the lower ITS rates should provide some relief for such incidental costs as exchange fees, etc.

e. A commenter mistakenly believes that loss of commissary privileges as a result of disciplinary action will also result in the loss of telephone privileges. This is not the case. As with postage stamp purchases, telephone access is independent of the regular commissary. For an inmate to lose telephone privileges as a result of disciplinary action, that sanction must be specifically stated.

f. A commenter objected to the proposed rule not being posted in the prisons within a timely manner. It is Bureau policy to post proposed rules in its institutions to facilitate inmate comments. The date of posting is often dictated, in part, by when we receive the requisite copies of the *Federal Register* and by mailing time. On occasion, delays can result from this process. To accommodate this commenter's concerns, the Bureau plans to extend (ordinarily to 60 days) the time for public comment on future Bureau rules.

g. A commenter favors letting each person who receives a call decide whether to accept or reject that call, without sending money. In response, the Bureau first notes that there is no requirement for an outside person to forward the inmate funds. As already discussed, the Bureau believes that there are strong correctional management reasons for restricting collect telephone calls and for providing that inmates should ordinarily pay for their telephone calls. Certainly, where the need exists, and as set forth in the rule, the Bureau will provide collect call capability or, in the alternative, pay for the call itself.

Each potential recipient of a call has the option of refusing consent to be maintained on the inmate's telephone list. Even if an individual elects to remain on the inmate's telephone list, he or she can use other means, such as an answering machine or other services provided by local telephone carriers (caller ID, for example), to screen incoming calls, or simply hang up.

h. One inmate commenter alleged that the Bureau transferred inmates to institutions far removed from anticipated release areas in violation of Bureau designation practice, resulting in reduced opportunity for visits and

higher costs for telephone communications. This commenter recommended that a certain number of free telephone calls be provided to any inmate located 500 miles or more from a home city.

As a general policy, the Bureau strives to locate inmates in institutions consistent with their security needs within reasonable proximity to a release residence. However, the Bureau's designation policy also allows for exceptions to be made, based upon management variables, e.g., institution capacity and individual inmate security needs. The generally lower flat rate fees for ITS calls should benefit such inmates. The regulations already contain provisions for the placement of collect calls or for calls at government expense in cases of compelling circumstances. See 28 CFR 540.105(d). The Bureau therefore finds no reason to adopt this commenter's recommendation.

i. One inmate commenter objected to the proposed rule, claiming that the telephone installed in her housing unit was not accessible to wheelchair-bound or visually-impaired inmates. The Bureau assures this commenter that it is Bureau policy to make every institution accessible to disabled inmates, including the use of telephone equipment. Institution staff have now resolved this commenter's problem by adjusting the telephone location to permit access by the disabled.

The Bureau notes that another commenter claiming various disabilities, visual and psychological, raised no objection to accessibility. As noted above, the Bureau is committed to making reasonable accommodations to meet the needs of all disabled inmates in providing telephone access.

j. Commenters objected that the proposed rule did not define terms such as "emergency" or "rehabilitative goals." A commenter claimed that staff was not available to inmates on a twenty-four hour a day, seven-days a week basis. The Bureau wishes to assure this commenter that every Bureau facility is staffed on a twenty-four hour a day, seven-day a week basis.

As for a definition of rehabilitative goals, the final rule does not include the term rehabilitation as a grounds for rejection of a telephone number from an inmate's telephone list. The Bureau notes, however, that while rehabilitation remains an important goal for the Bureau's management of inmates, a specific definition cannot be given because each situation is characterized by the facts and circumstances existing for a particular inmate. For example, an inmate's unit team will work with the

inmate concerning areas of interest to that inmate in preparation for the inmate's own self-improvement.

As for the definition of an emergency, this also must be predicated on the given situation, e.g., loss of contact with the family or death of a family member. See 28 CFR 540.101(e) and 540.105(d).

k. A commenter related an incident where she placed a collect call to a Senator's office from an institution where the ITS is not yet available and was asked for a return number, which she provided. The commenter alleged that she never received a return call and was subsequently informed by institution staff that she should no longer call the Senator's office collect. We are unable to address this complaint as it is unrelated to the proposed rule and is more properly addressed through the Administrative Remedy Program discussed previously. However, we note that, under the amended regulations, inmates may choose to submit telephone numbers for Senators and other elected officials on their telephone lists.

l. A commenter objected that the proposed rule was unfair to inmates who were medically idle (i.e., unable to participate in a work assignment because of a medical condition). If a medically idle inmate is also an "inmate without funds," as defined herein, then the final rule accommodates this comment, because all inmates without funds may make some collect calls or have the Bureau pay for the call in a compelling circumstance. See 28 CFR 540.105(b) and 540.105(d)).

m. Former § 540.105 is removed because its provisions are now incorporated in other portions of the final rule or are no longer necessary, due to changes in the Bureau's discipline policy.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of Executive Order 12866. This rule has been reviewed by OMB pursuant to Executive Order 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Parts 540 and 545

Prisoners.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), parts 540 and

545 in subchapter C of 28 CFR, chapter V are amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 is revised to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Section 540.100 is revised to read as follows:

§ 540.100 Purpose and scope.

(a) The Bureau of Prisons extends telephone privileges to inmates as part of its overall correctional management. Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development. An inmate may request to call a person of his or her choice outside the institution on a telephone provided for that purpose. However, limitations and conditions may be imposed upon an inmate's telephone privileges to ensure that these are consistent with other aspects of the Bureau's correctional management responsibilities. In addition to the procedures set forth in this subpart, inmate telephone use is subject to those limitations set forth under the inmate financial responsibility program (see 28 CFR 545.11) and those which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public. Restrictions on inmate telephone use may also be imposed as a disciplinary sanction (see 28 CFR part 541).

(b) Except as provided in this rule, the Warden shall permit an inmate who has not been restricted from telephone use as the result of a specific institutional disciplinary sanction to make at least one telephone call each month.

§ 540.105 [Removed]

§§ 540.101 through 540.104 [Redesignated as §§ 540.102 through 540.105]

3. Section 540.105 is removed and §§ 540.101 through 540.104 are redesignated as §§ 540.102 through 540.105.

4. New § 540.101 is added to read as follows:

§ 540.101 Procedures.

(a) *Telephone list preparation.* An inmate telephone call shall ordinarily be made to a number identified on the inmate's official telephone list. This list ordinarily may contain up to 30 numbers. The Associate Warden may authorize the placement of additional numbers on an inmate's telephone list based on the inmate's individual situation, e.g., size of family.

(1) During the admission and orientation process, an inmate who chooses to have telephone privileges shall prepare a proposed telephone list. At the time of submission, the inmate shall acknowledge that, to the best of the inmate's knowledge, the person or persons on the list are agreeable to receiving the inmate's telephone call and that the proposed calls are to be made for a purpose allowable under Bureau policy or institution guidelines.

(2) Except as provided in paragraph (a)(3) of this section, telephone numbers requested by an inmate will ordinarily be placed on the inmate's telephone list. When an inmate requests the placement of numbers for persons other than for immediate family or those persons already approved for the inmate's visiting list, staff ordinarily will notify those persons in writing that their numbers have been placed on the inmate's telephone list. The notice advises the recipient that the recipient's number will be removed from the list if the recipient makes a written request to the institution, or upon the written request of the inmate, or as provided in paragraph (a)(3) of this section.

(3) The Associate Warden may deny placement of a telephone number on an inmate's telephone list if the Associate Warden determines that there is a threat to institution security or good order, or a threat to the public. Any disapproval must be documented in writing to both the inmate and the proposed recipient. As with concerns about any correctional issue, including any portion of these telephone regulations, an inmate may appeal the denial through the administrative remedy procedure (see 28 CFR part 542). The Associate Warden will notify the denied recipient that he or she may appeal the denial by writing to the Warden within 15 days of the receipt of the denial.

(b) *Telephone list update.* Each Warden shall establish procedures to allow an inmate the opportunity to submit telephone list changes on at least a quarterly basis.

(c) *Telephone access codes.* An inmate may not possess another inmate's telephone access code number. An inmate may not give his or her telephone access code number to

another inmate, and is to report a compromised telephone access code number immediately to unit staff.

(d) *Placement and duration of telephone call.* The placement and duration of any telephone call is subject to availability of inmate funds. Ordinarily, an inmate who has sufficient funds is allowed at least three minutes for a telephone call. The Warden may limit the maximum length of telephone calling based on the situation at that institution (e.g., institution population or usage demand).

(e) *Exception.* The Warden may allow the placement of collect calls for good cause. Examples of good cause include, but are not limited to, inmates who are new arrivals to the institution, including new commitments and transfers; inmates confined at Metropolitan Correctional Centers, Metropolitan Detention Centers, or Federal Detention Centers; pretrial inmates; inmates in holdover status; inmates who are without funds (see § 540.105(b)); and in cases of family emergencies.

5. Newly designated § 540.105 is revised to read as follows:

§ 540.105 Expenses of inmate telephone use.

(a) An inmate is responsible for the expenses of inmate telephone use. Such expenses may include a fee for replacement of an inmate's telephone access code that is used in an institution which has implemented debit billing for inmate telephone calls. Each inmate is responsible for staying aware of his or her account balance through the automated process provided by the system. Third party billing and electronic transfer of a call to a third party are prohibited.

(b) The Warden shall provide at least one collect call each month for an inmate who is without funds. An inmate without funds is defined as an inmate who has not had a trust fund account balance of \$6.00 for the past 30 days. The Warden may increase the number of collect calls based upon local institution conditions (e.g., institution population, staff resources, and usage demand). To prevent abuses of this provision (e.g., inmate shows a pattern of depleting his or her commissary funds prior to placing collect calls), the Warden may impose restrictions on the provisions of this paragraph (b).

(c) The Warden shall limit the telephone privileges (collect and debit billed calls) of an inmate who has refused to participate in the Inmate Financial Responsibility Program (IFRP) as specified in 28 CFR part 545. [Effective date of this paragraph

(§ 540.105(c)) is delayed until January 3, 1995.)

(d) The Warden may direct the government to bear the expense of inmate telephone use or allow a call to be made collect under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency.

PART 545—WORK AND COMPENSATION

6. The authority citation for 28 CFR part 545 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99

7. In § 545.11, the following concluding sentences are added to introductory paragraph (b) and paragraph (d)(10) is added to read as follows:

§ 545.11 Procedures.

(b) * * * In developing an inmate's financial plan, the unit team shall exclude from its assessment \$50 a month deposited into the inmate's trust fund account. This \$50 exemption shall be calculated after subtracting from the trust fund account the inmate's IFRP minimum payment schedule for UNICOR or non-UNICOR work assignments, set forth below in paragraph (b)(1) and (b)(2) of this section. This \$50.00 is excluded to allow the inmate the opportunity to better maintain telephone

communication under the Inmate Telephone System (ITS).

(d) * * *

(10) The inmate will be allowed to place no more than one telephone call every month, as provided in 28 CFR 540.100(b). Any exception to this provision requires approval of the Warden, and is to be based on compelling circumstances. (Effective date of this paragraph (§ 545.11(d)(10)) is delayed until January 3, 1995.)

Dated: March 30, 1994.

Wade B. Houk,

Acting Director, Bureau of Prisons.

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BILLING CODE 4410–05–P